

Disciplinary Panel Hearing

Case of

James Brown

Essex

On

9 November 2018

At

RICS offices, 55 Colmore Row,
Birmingham B3 2AS

Chair

Alison Sansome (Lay Chair)

Members

Justin Mason (Surveyor Member)

Ron Barclay-Smith (Lay Member)

Legal Assessor

Fiona Barnett

RICS Representative

Christopher Geering

Service

1. Mr Brown was neither present nor represented.
2. The Panel had sight of the notice of hearing letter dated 12 September 2018. This was sent to Mr Brown by post to his RICS registered address on 12 September 2018.
3. The Panel was satisfied that the service requirements of the Disciplinary, Registration and Appeal Panel Rules 2009 (DRAPR) have been met, and that proper notice of the hearing was given.

Proceeding in absence

4. Mr Geering submitted that the Panel should proceed in Mr Brown's absence. He referred the Panel to the documents which showed that the hearing notice had been returned, however, he stated that the requirement for the RICS is to send the documents to the address recorded on the RICS system. Mr Geering referred the

Panel to evidence within the panel bundles which showed that emails previously sent to Mr Brown had not been opened by him. Mr Geering also referred the Panel to up to date correspondence from Mr Lynch, a RICS solicitor, confirming that efforts had been made today to contact Mr Brown by telephone but these had not met with any success. Mr Geering submitted that an adjournment was unlikely to secure Mr Brown's attendance and in all the circumstances it would be fair to proceed.

5. In reaching its decision, the Panel accepted the advice of the Legal Adviser. It bore in mind that whilst it has a discretion to commence and conduct proceedings in the absence of the member, it should exercise that discretion with the utmost care and caution. The Committee had regard to the factors set out by Lord Bingham in the case of **R v Jones 2002 UKHL 5** and the case of **General Medical Council v Adeogba and Visvardis 2016 EWCA Civ 162**.
6. The Panel acknowledged that Mr Brown has not received the notice of hearing which was returned to the RICS; it was also mindful that the notice has not been sent to him by email. Nevertheless, it was clear from correspondence provided to the Panel that other emails previously sent to Mr Brown by the RICS were not opened by him. Efforts were made today to contact Mr Brown by 'phone without success. The mobile telephone number on record was not a valid number and there was no option to leave a message. The home telephone number on record is now a business number. Mr Lynch, the RICS solicitor who attempted to contact Mr Brown confirmed that he left a message for Mr Brown on the business answerphone, but that the website for that business contained no reference to Mr Brown.
7. Having taken these factors into account, the Panel concluded that there was no merit in adjourning the hearing. In view of the attempts made to contact Mr Brown, the fact that the notice was returned, and the fact that he has not been opening emails from the RICS, the Panel's view was that an adjournment would be unlikely to secure his attendance. If Mr Brown has changed address, it is up to him to inform the RICS of a new address.
8. The Panel acknowledged that there may be some prejudice to Mr Brown if it proceeds today. However, it bore in mind that there is a public interest in hearing and concluding regulatory matters expeditiously. Having balanced the public interest with Mr Brown's interests, the Panel decided that it would be fair to proceed in Mr Brown's absence.

The Charges:

The charge against Mr Brown is:

Between 1 January 2016 and 1 February 2017 you have failed to comply with RICS' requirements in respect of Continuing Professional Development (CPD) in that you have not completed and recorded, or caused to be recorded, at least 20 hours of CPD on the RICS CPD portal.

Contrary to Rule 6 of the Rules of Conduct for Members 2007 version 6.

It is alleged that Mr Brown is therefore liable to disciplinary action under Bye-law 5.2.2(c).

Response

9. There was no response to the notice of hearing.

Summary

10. RICS' requirements in respect of CPD are set out in the document 'CPD Requirements and obligations'. They include requirements that 'All members must undertake a minimum of 20 hours CPD each calendar year (January to December)' and that 'Members must record their CPD activity online by 31 January.'
11. Members are required to log CPD via the RICS portal.
12. It is alleged that Mr Brown did not complete and record, or cause to be recorded, his CPD for 2016 on the RICS portal.

Evidence

13. The Panel had before it the RICS solicitor's bundle of documents, running to 31 pages.

Findings of fact

14. The Panel reminded itself that where the facts set out in the charge are denied, the burden of proof rests on the RICS. The RICS is required to prove the allegations to the civil standard, in other words, that it is more likely than not that the events occurred as alleged.
15. The Panel had regard to the witness statement and oral evidence of Mr James Lynch, RICS solicitor. Mr Lynch made reference in his witness statement to a member in the name of "Mr Green". He confirmed in evidence to the Panel that this was an error, and that all references to "Mr Green" were intended to refer to Mr Brown. He confirmed that Mr Brown had not recorded any CPD hours for the 2016 year.
16. The Panel accepted the evidence of Mr Lynch. It was satisfied that Mr Brown had not recorded any CPD for the 2016 year. Consequently, the Panel found the charge proved and found that it amounted to a breach of Rule 6 of the Code of Conduct for members.

Liability to disciplinary action

17. The Panel's view was that Mr Brown's failure to comply with the CPD requirements and his breach of Rule 6 of the Rules of Conduct for Members amounted to a serious

breach of his professional obligations. Mr Brown logged 22 CPD hours for 2013 which, in the Panel's view, demonstrated that he was aware of his obligations and knew how to log CPD on the RICS portal.

18. It is the duty of a RICS member to ensure that he is aware of the CPD requirements and to comply with them on a continuing basis. The CPD requirements are designed to ensure consistent standards within the profession, that individuals maintain up to date knowledge in their area of expertise and that members demonstrate this by the completion of a record at RICS which enables RICS to monitor compliance. The failure to fulfil professional obligations is likely to undermine public confidence in the profession. In the circumstances, the Panel was satisfied that Mr Brown was liable to disciplinary action.

Decision as to sanction

19. At the sanction stage, the Panel was referred to a further bundle of documents numbering 21 pages.

20. The Legal Assessor reminded the Panel, amongst other matters, that any sanction imposed must be proportionate. If the Panel is minded to impose a sanction, it must consider the sanctions in order of severity, starting with the least severe. It must satisfy itself that any sanction it imposes is the minimum necessary to meet the public interest.

21. The Panel had regard to the RICS indicative sanctions guidance (the Guidance).

22. The Panel decided that the following aggravating factors were present:

- This is Mr Brown's third breach of RICS CPD requirements.
- There has been a total lack of engagement with the RICS over a sustained period of time.

23. The Panel was unable to identify any mitigation.

24. The Panel first considered whether to impose a sanction. It decided that the matters were too serious for no sanction to be imposed given that this was Mr Brown's third consecutive annual breach of Rule 6.

25. The Panel also decided that a Caution would be insufficient. Mr Brown had previously been cautioned for failures to comply with CPD but this had not prevented him from repeatedly breaching the CPD requirements.

26. The Panel found that a Reprimand would also be insufficient to meet the public interest, given that there has been a pattern of behaviour by Mr Brown, and previous measures have had not been successful in preventing repetition. The Panel therefore concluded that a Reprimand would not address the public interest. The Panel also ruled out a fine, as Mr Brown has been fined previously for similar matters and this has not served as a deterrent to further breaches.

27. The Panel also considered whether it would be appropriate to impose conditions. However, given that Mr Brown has not engaged with the RICS, the Panel could not be satisfied that he would comply with conditions. It therefore decided that conditions would be neither workable nor appropriate.
28. The Panel then considered excluding Mr Brown from membership. This was Mr Brown's third breach of CPD requirements within 10 years of a Caution having been imposed. The Panel had not identified any mitigating factors in this case. Given the repeated nature of the misconduct, and the fact that previous administrative sanctions have not served as a deterrent, the Panel was satisfied that an Exclusion order was the minimum sanction necessary to ensure that the public is protected, that public confidence in the profession is maintained, and proper standards of conduct are upheld.
29. The Panel balanced the public interest with Mr Brown's interests. It bore in mind that excluding Mr Brown from membership of the RICS may cause hardship to him. However, in the absence of any mitigation, the Panel was satisfied that the public interest weighed more heavily than Mr Brown's interests, and that an order of Exclusion was a proportionate response to address the regulatory breach.
30. Accordingly the Panel orders that Mr Brown be excluded from membership.

Costs

31. Mr Geering provided the Panel with a schedule of costs and invited the Panel to make a costs order in the sum of £1,283.
32. The Panel considered carefully the costs sought. It bore in mind that the facts were found proved, that Mr Brown was found to be liable to disciplinary action and a disciplinary sanction was imposed. It decided that a costs order should therefore be made. The Panel's view was that the costs sought were reasonable. It had received no representations from Mr Brown on this issue and therefore decided to make a costs order for the full amount requested.
33. The Panel orders that Mr Brown pays costs to the RICS in the amount of £1,283.

Publication

34. The Panel considered the guidance as to publication of its decisions. There were no exceptional circumstances which would justify departing from the principle of open justice. The Panel therefore ordered that this decision should be published in Modus and on the RICS website.

Appeal Period

35. Mr Brown has 28 days from service of the notification of this decision to appeal this decision in accordance with Rules 58 and 60 of the Disciplinary, Registration and Appeal Panel Rules.

36. In accordance with Rules 59 and 60 of the Disciplinary, Registration and Appeal Panel Rules, the Honorary Secretary of RICS has 28 days, from service of the notification of this decision, to require a review of this Decision.